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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL SECTION

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In re Applications of)	MM DOCKET NO. 93-302 ✓
)	
VICTORY CHRISTIAN CENTER, INC.)	File No. BPH-920326MA
)	
INTERMART BROADCASTING OF NORTH CAROLINA, INC.)	File No. BPH-920326MB
)	
TODD P. ROBINSON)	File No. BPH-920327MI
)	
SATURDAY COMMUNICATIONS LIMITED PARTNERSHIP)	File No. BPH-920327ML
)	
For Construction Permit for a New FM Station on Channel 224A in Harrisburg, North Carolina)	

MEMORANDUM OPINION AND ORDER

Issued: February 25, 1994

Released: February 28, 1994

Background

1. This is a ruling on a Joint Request For Approval Of Agreement that was filed on January 6, 1994, by Victory Christian Center ("VCC"), Intermart Broadcasting of North Carolina, Inc. ("Intermart"), Todd P. Robinson ("Robinson"), and Saturday Communications Limited Partnership ("SCLP"). Related pleadings are a Legal Amendment filed on January 6, 1994, by Saturday; a Petition For Leave To Amend And Amendment filed on January 6, 1994, by Intermart; a Motion To Delete Issue filed on January 6, 1994, by Intermart; a Proof Of Publication filed on January 24, 1994, by Intermart; a Supplement To Joint Request For Approval Of Agreement filed on January 26, 1994, by VCC reflecting expenses; and a Shareholders' Agreement filed on February 24, 1994. The Mass Media Bureau has filed its Consolidated Comments On Joint Request For Approval Of Agreement, Petition For Leave To Amend And Amendment, And Motion To Delete Issue and the Audio Services Division submitted a letter to the Presiding Judge requesting the removal of the contingent environmental issue.

Facts

Settlement Payments

2. The Agreement contemplates the dismissals of the applications of VCC and SCLP in exchange for payments not to exceed \$15,000 and \$20,000 to VCC and SCLP respectively. The Agreement further contemplates the grant of Intermart's application, as amended. Also, Robinson is to receive 50% of the voting stock of Intermart.

3. The Commission's rules permit recovery in a settlement of only the actual legitimate and prudent expenses incurred by the dismissing party. 47 C.F.R. §73.3525 (a) (3). VCC's Supplement reflects legal fees, engineering fees, and filing and hearing fees for total expenditures of \$18,816. The Joint Request reflects SCLP's legal fees, engineering fees, a site selection fee, filing and hearing fees, and miscellaneous shipment costs in the total amount of \$24,926. Both parties will seek to recover a refund of their respective hearing fees and both parties commit to refund to Intermart the amount of those fees if they are recovered. Principals of VCC and SCLP have submitted declarations with attached invoices which are accountings of expenses that conform with Commission standards. See Amendment Of Section 73.3525, 6 F.C.C. Rcd 85, 91 n. 54 (1990) (brief description of the nature of the specific activity and connection with proceeding). Also, the required declarations of no consideration have been filed by all parties.

The Merger

4. The Agreement provides that Intermart's principal, James E. Martin, Jr. ("Martin") will combine with Robinson as equal shareholders with each holding 50% of the outstanding voting shares of Intermart. Pursuant to the Shareholders' Agreement, Robinson and Martin become equal owners of Intermart. Robinson's application will be dismissed. There will be no compensation paid in connection with the creation of the joint interests of Martin and Robinson in Intermart and therefore there would be no question of a payment made incident to a merger that would circumvent the monetary limitations on non-merger settlements. See Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements for Construction Permits, 6 F.C.C. Rcd 2901, 2902 (1991). Also, the combining of the interests of the two applicants will bring additional capital to the enterprise which should result in providing more effective broadcast services to the Harrisburg community.

Environmental Issue

5. Intermart seeks to cure an environmental issue by an Amendment and a Motion To Delete Issue. See Hearing Designation Order DA 93-1476, released December 17, 1993 ("HDO") at Para. 5 (Intermart to file an EA with the Chief, Audio Services Division for assessment under §1.1308). The Bureau's Comment of January 28, 1994, stated that the Bureau will advise the Presiding Judge of the efficacy of Intermart's environmental assessment upon completion of its review. On February 22, 1994, the Assistant Chief, Audio Services Division, advised the Presiding Judge in writing:

Upon examination of the enclosed pleading [Intermart Amendment] the Bureau finds that the information satisfies the requirement of 47 C.F.R. § 1.1311.

Accordingly, the Bureau requests that the contingent environmental issue specified as to this applicant be eliminated from the Hearing Designation Order.

Based on the unqualified statement of the Bureau quoted above and the representation of Intermart in its Motion To Delete Issue and in its Petition For Leave To Amend And Amendment, the environmental issue as to Intermart is resolved in favor of Intermart and it will be deleted.¹

Settlement

DISPATCHED BY

6. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, Section 311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926 (Review Bd. 1983).

7. In this case, the Joint Request was filed in accordance with Section 73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. It is determined that the parties have complied with 47 C.F.R. §§73.3525(a)(1) and (a)(2) of the Commission's rules. A review of the line-item expenses of VCC and SCLP are found to be legitimate and prudent in accordance with the Commission's standards. See 47 C.F.R. §73.3575(a)(3). And with the deletion of the environmental issue, the Bureau has no objection to approving the settlement.

8. There has been compliance with the local publication requirement of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also have paid the required hearing fees. 47 C.F.R. §1.221(g). There are no disqualifying issues to resolve. Commission resources will be conserved by the termination of this case prior to hearing. In addition, the public interest will be served by approval of this settlement which will reduce substantially the costs of litigation to the parties and to the Commission. Accordingly, it is appropriate that the proposed settlement be accepted.

Rulings

IT IS ORDERED that the Joint Request For Approval Of Agreement that was filed on January 6, 1994, by Victory Christian Center, Intermart Broadcasting of North Carolina, Inc., Todd P. Robinson, and Saturday Communications Limited Partnership, IS GRANTED and the Settlement Agreement IS ACCEPTED.

¹ There is also an environmental issue pending with respect to the proposal of SCLP. See HDQ at Para.5. Since SCLP will receive a payment in return for its dismissal, that environmental issue becomes moot. SCLP also filed a Legal Amendment which addresses EEO and financial matters raised in the HDQ. In view of the settlement, those issues also are moot and need not be addressed.

IT IS FURTHER ORDERED that the Petition For Leave To Amend And Amendment filed by Intermart on January 6, 1994, IS GRANTED and the Amendment IS ACCEPTED. FEB 28 3 04 AM '94

IT IS FURTHER ORDERED that the Motion to Delete Issue filed by Intermart on January 6, 1994, IS GRANTED and the environmental issue IS DELETED. BY

IT IS FURTHER ORDERED that the application of Victory Christian Center (File No. BPH-920326MA) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of Todd P. Robinson (File No. BPH-920327MI) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of Saturday Communications Limited Partnership (File No. BPH-92032ML) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the application of Intermart Broadcasting of North Carolina, Inc., as amended, (File No. BPH-920326MA) to construct a new FM Station on Channel 224A in Harrisburg, North Carolina IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge